

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CHICAGO MERCANTILE EXCHANGE  
INC.,

Plaintiff,

v.

ICE CLEAR US, INC.; ICE CLEAR  
EUROPE LIMITED; AND  
INTERCONTINENTAL EXCHANGE,  
INC.,

Defendants.

Case No. 18-cv-01376

Hon. Matthew F. Kennelly

Magistrate Hon. M. David Weisman

**CME'S STATUS REPORT ON TRIAL WITNESSES**

Pursuant to the Court's Order during today's status hearing (ECF 310), Plaintiff Chicago Mercantile Exchange Inc. ("CME") submits this report reflecting the witnesses that CME will call at trial and their geographic locations.

At the outset, CME appreciates the Court's guidance and consideration on issues related to the upcoming trial. Based on the discussions during today's Court hearing, CME requests the right to brief the question of whether a claim for disgorgement of profits involves the right to a jury trial or whether all issues relating to disgorgement are solely for the Court. CME agrees to submit this brief by 4pm on Monday, August 10. This decision will assist CME is considering whether or not it will waive the right to a jury trial and proceed with a bench trial on all issues. ICE has already represented in the

Parties' Joint Status Report (ECF 307) that they will waive the right to a jury and intend to proceed with a bench trial on their breach of contract counterclaim.

To comply with the Court's order, CME provides information below for two scenarios: (1) separate jury and bench trials, with rosters of witnesses and their locations; and (2) a single bench trial, with a single roster of witnesses if CME were to elect have all issues tried in a single bench trial.

Finally, CME believes that with either a jury or bench trial there is the possibility to further streamline some factual issues by virtue of stipulations of fact that could eliminate or narrow the scope of some witness testimony.

#### **I. Scenario #1: Separate Jury & Bench Trials**

##### **A. Witnesses for Jury Trial (CME's Counterfeiting Claim and Claim for Statutory Damages and Parties' Breach of Contract claims)**

CME identifies the following individuals that it will call as part of its case-in-chief during a jury trial on the issues discussed during today's status hearing. As CME cannot entirely predict all witnesses that ICE may intend to call in its case in chief, CME must reserve the right to call additional witnesses in rebuttal if that becomes necessary.

##### **1. Live In-Person**

<b>CME Case-in-chief Witness</b>	<b>Location</b>
Corey Farabi	Missouri
David Marshall (expert)	Chicago, IL
Luis Moreau	Chicago, IL
Gregory Skony	Chicago, IL
Suzanne Sprague	Chicago, IL
Kim Schenk (expert) <sup>1</sup>	Chicago, IL
Adam Warren (expert)	Chicago, IL

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<sup>1</sup> Testimony limited to information related counterfeiting statutory damages some of which may be unnecessary depending on stipulations and Ms. Schenk will likely be a rebuttal witness to ICE's claim for breach of contract damages.

## 2. Deposition Designation

<b>CME Case-in-chief Witness</b>	<b>Location</b>
Mark Woodward	London, UK
Joseph Albert	Atlanta, GA
Hester Serafini	New York
Kelly Loeffler	Atlanta, GA
Jeffrey Amato	Atlanta, GA
Michael Gibson	UK
Paul Philips	London, UK
Scott Hill	Atlanta, GA

### B. Witnesses for Bench Trial (Disgorgement of Profits for Trademark Infringement/Counterfeiting Claims and ICE's Implied License Equitable Defense)

CME notes that there is some overlap between the factual issues relating to counterfeiting and the factual issues relating to relief for trademark infringement claims.

CME will defer to the Court if it believes that there is a way to avoid duplication of witnesses while still preserving the record on the separate issue of infringement.

#### a. Live In-Person

<b>CME Case-in-chief Witness</b>	<b>Location</b>
Dhiraj Bawadhankar	Chicago, IL
Stephen Ishmael	Chicago, IL
David Marshall (expert)	Chicago, IL
Luis Moreau	Chicago, IL
Kim Schenk (expert)	Chicago, IL
Gregory Skony	Chicago, IL
Suzanne Sprague	Chicago, IL

#### b. Deposition Designation

<b>CME Case-in-chief Witness</b>	<b>Location</b>
Bruce Domash	Chicago, IL
Johnathan Short	Atlanta, GA
Mark Woodward	London, UK
Joseph Albert	Atlanta, GA
Hester Serafini	New York

Kelly Loeffler	Atlanta, GA
Jeffrey Amato	Atlanta, GA
Michael Gibson	UK
Paul Philips	London, UK
Scott Hill	Atlanta, GA
Ben Jackson	Georgia or Connecticut

## II. Scenario #2: Single Bench Trial on All Issues

### 1. CME's List of Trial Witnesses

CME identifies the following individuals that it will call at a single bench trial on all issues (whether live in-person or via deposition testimony):

<b>CME Case-in-chief Witness</b>	<b>Location</b>
Dhiraj Bawadhankar	Chicago, IL
Stephen Ishmael	Chicago, IL
Luis Moreau	Chicago, IL
Corey Farabi	Missouri
David Marshall (expert)	Chicago, IL
Kim Schenk (expert)	Chicago, IL
Gregory Skony	Chicago, IL
Suzanne Sprague	Chicago, IL
Adam Warren (expert)	Chicago, IL
Bruce Domash (deposition)	Chicago, IL
Johnathan Short (deposition)	Atlanta, GA
Scott Hill (deposition)	Atlanta, GA
Ben Jackson (deposition)	Atlanta, Georgia or Connecticut
Mark Woodward (deposition)	London, UK
Joseph Albert (deposition)	Atlanta, GA
Hester Serafini (deposition)	New York
Jeffrey Amato (deposition)	Atlanta, GA
Kelly Loeffler (deposition)	Atlanta, GA
Paul Philips (deposition)	London, UK
Michael Gibson (deposition)	UK

CME looks forward to discussing these issues with the Court during the next scheduled status hearing.

Respectfully submitted this 6th day of August 2020,

*Attorneys for Plaintiff Chicago Mercantile  
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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing CME'S STATUS REPORT ON TRIAL WITNESSES was electronically filed on August 6, 2020 and served upon Defendants ICE Clear US, Inc. and ICE Clear Europe Limited's counsel via the Court's electronic filing system to:

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Dated: August 6, 2020

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